IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1122 of 2004
with
SPECIAL CIVIL APPLICATION No 1133, 2584, 3173, 3603, 3604 and 4467 of 2004
with
SPECIAL CIVIL APPLICATION No 16971 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE M.S.SHAH
and
HON'BLE MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

KAMDHENU EXIM PVT. LTD.

Versus

UNION OF INDIA

Appearance:
1. Special Civil Application No. 1122 of 2004
MR PARESH M DAVE for Petitioner No. 1-2
MR ASIM J PANDYA for Respondent No. 1-3
..... for Respondent No. 4

CORAM : HON'BLE MR.JUSTICE M.S.SHAH
and
HON'BLE MR.JUSTICE A.M.KAPADIA

Date of decision: 26/04/2004

COMMON ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE M.S.SHAH)

RULE.

Ms DN Raval, learned Senior Standing Counsel for the Central Government and Mr Asim Pandya, learned Addl. Standing Counsel for the Central Government waive service of Rule.

In the facts and circumstances of the case, the petitions are taken up for final disposal today.

All these petitions involve common issues, hence the same are disposed of by this common judgment.

2. Taking Special Civil Application No.1122 of 2004 as an illustrative case, the facts leading to filing of the said petition, briefly stated and as averred by the petitioner, are as under:-

On 31.8.2001, the petitioner-Company was granted Letter of Permission to operate as 100% Export Oriented Undertaking (EOU) for textile processing and producing articles. The petitioner-Company thereafter commenced activities as 100% EOU and started exporting textile goods manufactured by utilising goods procured duty free. On account of recessionary trend in the international market, on 25.7.2003 the petitioner Company applied for converting its activities from EOU to a normal manufacturing unit because it was difficult to survive on exports. The Deputy Development Commissioner, Special Economic Zone, Gandhidham, Kutch issued Letter of Permission dated 9/10.9.2003 for "in-principle debonding" of the petitioner's factory from 100% EOU to a normal Domestic Tariff Area (DTA) unit. Thereafter, on 25.11.2003, the petitioner-Company applied to the Commissioner of Central Excise for cancellation of its warehousing licence as 100% EOU and to allow the petitioner-Company to work as a normal excisable unit by granting registration as such. It is submitted that the petitioner has invested substantial monies in plant, machinery and other infrastructural facilities of factory and the entire infrastructure is lying totally idle and useless for last several months as the Company is not manufacturing any goods as EOU and the Company is also not allowed to manufacture any goods and clear the same in the local market as the Central Excise registration is not issued in its favour. That the inaction on the part of the respondents in not cancelling the petitioner's warehousing registration and to issue a central excise registration has resulted in loss of production and the

revenue for the Government as the petitioner-Company would generate employment and revenue including the central excise duties if it is allowed to manufacture goods and remove the same on payment of duties. Hence, the petition.

In some cases, the authorities have already issued show cause notices calling upon the concerned petitioners to pay the amount of excise duty, interest and penalty. In some other cases, the authorities have not yet issued show cause notices, but it is the case of the respondents that show cause notices are required to be issued against the concerned petitioners because the goods manufactured by them as EOU units were not exported but were sold in the DTA market and thus the units failed to fulfil the export obligations and committed various violations such as non-payment of establishment charges and have also not complied with the guidelines contained in Appendix 14-1L of the Handbook of Procedures issued under the Exim policy. In short, the applications for debonding and for registration as DTA units are not being considered by the concerned Central Excise Officers on the ground of pending demand/s.

3. Messrs. PM Dave, Mihir Joshi and KR Dave, learned counsel for the petitioners in this group of petitions have placed strong reliance on the interim order dated 24.12.2003 passed by this Court in Special Civil Application No.14918 of 2003. It is submitted that when there is no final adjudication about the amount of duty to be paid by the petitioners when they were working as EOU and when the petitioner-units have remained closed for a number of months with a large work-force remaining idle, the petitioners may not be required to pay any amount as a precondition for de-bonding or for registration as a DTA unit.

4. On the other hand, it is submitted by Ms DN Raval, learned Senior Standing Counsel for the Central Government and Mr Asim Pandya, learned Addl. Standing Counsel for the Central Government that after the aforesaid order dated 24.12.2003 of this Hon'ble Court, Central Board of Excise & Customs, New Delhi has issued Circular No.8/2004-CUS dated 28.1.2004 laying down the guidelines for examining the applications of the units which have applied for conversion as DTA units. It is, therefore, submitted that the respondent-authorities cannot be expected not to stipulate conditions which are required to be stipulated in light of the above circular. It is further submitted that there are guidelines for exit of EOU units as contained in Appendix 14-1L of the

Handbook of Procedures issued by the Director General of Foreign Trade which are also required to be followed in such matters.

5. Having heard the learned counsel for the parties, we are of the view that since the circular dated 28.1.2004 was issued after the aforesaid interim order dated 24.12.2003 in Special Civil Application No.14918 of 2003, the respondent-authorities are required to consider and decide the applications of the petitioners for conversion as DTA unit in light of the guidelines contained in the aforesaid circular dated 28.1.2004.

At the same time considering the spirit underlying the above order dated 24.12.2003 and in view of the hardships being pointed out on behalf of the petitioners, it appears to the Court that it will be in the fitness of things if the respondents consider the petitioners' request for dispensing with the bank guarantee as stipulated in paragraph 4 of the circular and instead to grant permission to the petitioners, to deposit with the respondent-authorities (without prejudice) 1% (one percent) of the amount involved in the show cause notices every month after the petitioner-units are granted permission to start production as DTA units. This means that instead of the respondent-authorities merely getting a bank guarantee of 10% of the amount involved in the show cause notices, the respondent-authorities will get 10% of the amount involved in the show cause notices as cash receipts within a period of ten months from the date the petitioner-units start production as DTA units over and above excise duty and other duties on account of production in future.

In case where no show cause notices are issued so far, the respondent-authorities may consider whether to issue show cause notices depending on the facts and circumstances of each case, as expeditiously as possible and preferably within one month from the date of receipt writ of this Court or a certified copy of this judgment, whichever is earlier.

Whatever duty the petitioners are required to pay on the raw materials or stocks lying with them at present, the petitioners shall pay according to law and this order does not exempt the petitioners from any such liability.

As far as the guidelines for exit of EOU units are concerned, the petitioners shall comply with such

guidelines and it will be open to the respondent-authorities to take such guidelines also into account while considering the petitioners' applications for debonding and/or for conversion of their units as DTA unit. If the petitioners' applications are deficient in any respect or if any documents, as required by the rules or guidelines, are not produced by the petitioners, the respondent-authorities shall intimate the respective petitioners to remove the deficiencies and/or to furnish the requisite information and documents at the earliest and within 15 days from the date of receipt of the writ of this Court or a certified copy of this judgment, whichever is earlier.

6. The respondent-authorities shall accordingly consider the applications within one month from the date of receipt of writ of this Court or a certified copy of this judgment, whichever is earlier, in light of the observations made hereinabove.

7. The petitions are accordingly disposed of in terms of the aforesaid directions.
Rule is made absolute to the aforesaid extent.

(M.S. SHAH, J.)

(A.M.KAPADIA, J.)
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